CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Single Member Bench
Court – I

Service Tax Appeal No. 30266 of 2023
(Arising out of Order-in-Appeal No.VIZ-EXCUS-000-APP-196-22-23 dt.02.11.2022 passed by Commissioner of Central Tax & Customs, Guntur)

Pest Busters .... **Appellant**
Siddhartha Apartments, Gandhinagar,
Vijayawada, AP – 520 003

VERSUS

Commissioner of Central Tax .... **Respondent**
Guntur
CR Buildings, Kannavarithota,
Guntur, AP – 522 004

Appearance
Shri C.S. Srinivas, Advocate for the Appellant.
Shri Chittaranjan Wagh Prakash, AR for the Respondent.

Coram:
HON'BLE Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/30415/2023

Date of Hearing: 06.12.2023
Date of Decision: 06.12.2023

[Order per: ANIL CHOUDHARY]

Heard the parties.

2. The issue involved in this Appeal is whether penalty under Rule 15(3) read with Sec 78 has been rightly imposed for Rs.1,18,197/-.

3. The brief facts are that the Appellant is a partnership firm, having three partners who are engaged in cleaning services. The Appellant was registered with the department. In the course of audit for the period April 2014 to June 2017, it was observed that the Appellant has erroneously taken Cenvat credit based on the ledger copies or account statement given by the service recipients, which is not an eligible document for taking credit totalling Rs.1,12,591/-. In fact, the Appellant had raised invoices and also charged service tax on the recipients of the cleaning service. However, the recipients of the service, in their wisdom, deposited the tax themselves under RCM. The Appellant, under wrong appreciation of law, has taken the credit in their Cenvat register and/or in their books of accounts. The Appellant has taken another credit of Rs.5,525/- based on the acknowledgment receipts issued by the service providers viz., Idea Cellular, ACT broadband, Justdial and others. It

appeared to Revenue that Appellant is not eligible to take credit on these input services. Accordingly, SCN dated 20.11.2019 was issued invoking the extended period of limitation. The Appellant did not file any reply but appeared for Personal Hearing and thereafter, SCN was adjudicated. The Proposed demand was confirmed for Rs.1,18,197/- disallowing the Cenvat credit so taken and equal amount of penalty was imposed under Rule 15(3) read with Sec 78 of the Act.

4. Being aggrieved, the Appellant preferred Appeal before the Commissioner (Appeals), who was pleased to reject the Appeal.

5. Being aggrieved, the Appellant have filed Appeal before this Tribunal. Learned Counsel urges that admittedly, Appellant has erroneously taken credit due to their misunderstanding of law. However, it is evident from the allegations in the SCN that there is no malafide in taking such credit. Learned Counsel also states that the Appellant has deposited the whole amount of Rs.1,18,197/- by two challans dated 22.1.2022 & 18.2.2023, a copy of which is on record. Learned Counsel also urges that Appellant is involved in petty work of cleaning services and the persons involved are not much educated nor are they able to afford and take services of competent professionals for compliance. Accordingly, he states that a lenient view may be taken and penalties imposed may be set aside.

6. Learned AR for Revenue relies on the Impugned Order.

7. Having considered the rival contentions, I find that there is no evidence on record of utilization of credit taken. It further appears from the facts on record that the partners of the Appellant firm are not much educated and are involved in petty/menial job of cleaning services. Further, I find that the amount involved is also very small, being less than Rs.1.20 Lakhs. In view of the facts and circumstances, taking a lenient view, the penalty imposed under Rule 15(3) read with Sec 78 is set aside.

8. Thus, the Appeal is allowed to the extent of penalty imposed. Appellant shall be entitled to consequential benefits, if any, in accordance with law.

(Dictated and pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Veda